Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Prestige Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by agent KC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing. The tenant stated it is not fair that he cannot record the hearing. I explained that Rule of Procedure 6.11 prohibits recording the hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

As both parties were present service was confirmed. The tenant confirmed receipt of the application and evidence (the materials) in January 2021 and that he did not serve evidence. Based on the testimonies I find that the tenant was served with the materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?

2. an authorization to retain the tenant's deposit?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on April 01, 2019 and ended on January 08, 2021. Monthly rent was $1,800.00, due on the first day of the month. At the outset of the tenancy a security deposit of $900.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It states:

> (20). STRATA FINES, FEES AND CHARGES:
> Any charges implied against the residential rental by the tenant or guests of the tenant during the term of the tenancy will be deducted from the tenant's bank accounts or be paid directly by the tenant. Should the tenant dispute any fines, fees or charges imposed by the Strata Council and or Corporation, It ls the tenant's sole responsibility to arrange, attend and organize any communication or meetings needed to resolve the matter.

The landlord confirmed receipt of the tenant's forwarding address in writing on January 11, 2021. This application was submitted on January 15, 2021.

The landlord affirmed both parties conducted a move-in inspection and signed the inspection report on March 29, 2019. A copy of the inspection report signed by both parties on March 29, 2019 was submitted into evidence. It indicates the rental unit was in good condition when the tenancy started.

The tenant stated he does not believe that he signed the move-in inspection report, as from what he recalls, agent KC was in the rental unit only on the move-out date.

The move-out inspection report dated January 08, 2021 is signed by agent KC. The landlord testified the tenant refused to sign the move-out inspection report. It states: "tenant does not agree with any further deduction except the 2 x fridge shelving. Tenant has requested arbitration to resolve outstanding."

The tenant confirmed the landlord conducted the move-out inspection on January 08, 2021 and that he did not sign the inspection report. The tenant received a copy of the report on January 13, 2021 and said he agrees to a certain degree with the condition inspection report.

The landlord is claiming for compensation in the amount of $300.00 for painting because the tenant damaged the walls. The landlord said the tenant caused approximately 14 adhesive hook damages on the walls of the 750 square feet rental unit. The rental unit was painted in September 2017. The inspection report indicates when the tenancy ended 'one hook leftover' in the living room, 'multiple adhesive peel damage' in the master bedroom, 'one paint peeled' in the en-suite bathroom, 'multiple paint peeled' in the second bathroom. The landlord submitted into evidence 7 photographs showing wall damage and an estimate to repair the wall damage.

The tenant affirmed the damage is regular wear and tear and that he was allowed to install hooks on the walls.

The landlord is claiming for compensation in the amount of $50.00 to repair the master bedroom blind. The landlord said the tenant spilled food on the blind and it needs to be repaired. The inspection report indicates 'one blind dirty'. The landlord submitted into evidence one photograph and a handwritten estimate to "repair broken blinds (living room and master bedroom) – labour $50.00". The landlord does not know how much it cost to repair the master bedroom blind, but the repair cost was smaller than $50.00.

The tenant stated the master bedroom blind damage is regular wear and tear.

The landlord is claiming for compensation in the amount of $336.00 to replace two fridge shelves damaged by the tenant. The inspection report indicates: "2 x shelf missing". The landlord submitted into evidence two photographs and a quotation in the amount of $150.00 for each shelf, plus taxes. The tenant emailed the landlord on January 13, 2021: "Yes I am personally responsible for the fridge shelving. 300$ is also ridiculous. I'll need to have the invoice for the quote".

The tenant retracted the email offer to pay for the shelves, as he damaged them accidentally.

The landlord is claiming for compensation in the amount of $400.00 for two strata fines. The landlord submitted a letter dated December 03, 2019 stating the tenant was issued two fines of $200.00 for noise bylaw violations on September 16 and October 29, 2019.

The landlord submitted a ledger indicating two strata fines in the amount of $200.00 each.

The landlord scheduled a meeting with the tenant and the strata council to appeal the strata fines. The tenant said he missed the meeting and the fines were confirmed. The tenant said he tried to communicate with the strata council, but the council refused to communicate with him because he is not a landlord.

The landlord submitted into evidence a monetary order worksheet dated January 14, 2021 indicating a claim in the total amount of $1,086.00.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Move-in Inspection

Section 23(1) of the Act requires the landlord and tenant to complete a condition inspection report at the outset of the tenancy. Section 23(4) of the Act states the condition inspection report must be completed in accordance with the regulations.

The parties offered conflicting testimony about the move-in inspection. The tenant's testimony was vague and non-convincing, as the tenant stated he "does not believe" he signed the move-in inspection report and that "from what he recalls" agent KC was in the rental unit only on the move-out date.

Based on the landlord's convincing and detailed testimony and the inspection report signed by both parties on March 29, 2019, I find the landlord complied with subsections 23(1) and (4) of the Act.

Move-out Inspection

Section 35(3) of the Act states the landlord and tenant must sign the move-out inspection report and the landlord must give the tenant a copy. Regulation 18(1) states:

> The landlord must give the tenant a copy of the signed condition inspection report
> […]
> (b)of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
> (i)the date the condition inspection is completed, and
> (ii)the date the landlord receives the tenant's forwarding address in writing.

The parties agreed the move-out inspection was conducted on January 08, 2021, the landlord received the tenant's forwarding address on January 11, 2021 and the tenant received the move-out inspection report on January 13, 2021.

As such, I find the landlord complied with section 35(3) of the Act.

Painting

Section 37(2) of the Act states:

(2)When a tenant vacates a rental unit, the tenant must
(a)leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
(b)give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Residential Tenancy Branch Policy Guideline 1 states:

PAINTING
The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.
[…]
Nail Holes:
1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.
PAINTING
The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.
The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

(emphasis added)

Based on the both parties' testimony, the inspection report and the photographs, I find the landlord failed to prove, on a balance of probabilities, that the tenant breached the Act. I find that 14 adhesive hook damages on the walls of a 2 bedroom, 750 square feet rental unit is not an excessive number.

As such, I dismiss the landlord's claim.

Master bedroom window covering

Based on both parties' testimony, the photograph and the inspection report, I find the tenant breached section 37(2)(a) of the Act by not cleaning the master bedroom window covering and the landlord suffered a loss because of the tenant's failure to comply with the Act.

The handwritten estimate refers to the repair of the windows coverings in the living room and the master bedroom. The landlord's testimony about the cost to repair the master bedroom window covering was vague. I find the landlord did not prove the value of the damage or loss.

Thus, I dismiss the landlord's claim.

Fridge shelves replacement

Based on both parties' testimony, the photographs, the inspection report and the quotation, I find the tenant breached section 37(2)(a) of the Act by not replacing the two damaged fridge shelves and the landlord suffered a loss in the amount of $336.00. The tenant is responsible for accidental damages.

As such, I award the landlord compensation in the amount of $336.00.

Strata fines

I accept the uncontested testimony, the December 03, 2019 letter and the ledger that the tenant received two strata fines for noise violations in the total amount of $400.00.

The landlord scheduled a meeting with the tenant and the strata council to appeal the strata fines, but the tenant did not attend.

I find the tenant breached section 20 of the tenancy agreement by not paying the two strata fines and the landlord incurred a loss in the amount of $400.00.

As such, I award the landlord $400.00 in compensation for this loss.

Deposit

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The landlord confirmed receipt of the tenant's forwarding address on January 11, 2021 and brought an application for dispute resolution on January 15, 2021, within the timeframe of section 38(1) of the Act.

Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the $100.00 filing fee.

In summary:

Item	**Amount $**
Fridge shelves replacement	336.00
Strata fines	400.00
Filing fee	100.00
Total:	**836.00**

Set-off

Residential Tenancy Branch Policy Guideline 17 states:

> The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the amount of $836.00 from the deposit to offset the monetary award for losses incurred due to the tenant's non-compliance with the Act and the tenancy agreement. The landlord must return the balance of the deposit.

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain $836.00 from the tenant's deposit in total satisfaction of the losses incurred. Pursuant to section 38 of the Act, I grant the tenant a monetary award in the amount of $64.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 20, 2021

Residential Tenancy Branch